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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/813,380

03/30/2004

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2004B020

4679

7590 02/22/2008
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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/813,380	Applicant(s) BURI AK ET AL.	
	Examiner WALTER B. AUGHENBAUGH	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) 1-31 and 56-63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-55 and 64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's Request for Reconsideration filed November 20, 2007 has been received and considered by Examiner.
2. Claim 64 is incorrectly labeled as "(New)" in the set of claims submitted with the Request for Reconsideration filed November 20, 2007. New claim 64 was presented in the Amendment filed July 2, 2007.
3. No new claims have been presented in the set of claims submitted with the Request for Reconsideration filed November 20, 2007.

Election/Restrictions

4. This application contains claims 56-63 drawn to an invention nonelected with traverse in the reply filed on July 2, 2007. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

REPEATED REJECTIONS

Claim Rejections - 35 USC § 102

5. The 35 U.S.C. 102 rejection of claims 32-34, 37-41, 45-50 and 64 made of record in paragraph 6 of the previous Office Action mailed September 18, 2007 has been repeated for the reasons previously made of record.

Claim Rejections - 35 USC § 103

6. The 35 U.S.C. 103 rejection of claims 35, 36, 42, 43 and 51-55 made of record in paragraph 8 of the previous Office Action mailed September 18, 2007 has been repeated for the reasons previously made of record.

7. The 35 U.S.C. 103 rejection of claim 44 made of record in paragraph 9 of the previous Office Action mailed September 18, 2007 has been repeated for the reasons previously made of record.

Response to Arguments

8. Applicant's arguments presented on pages 10-12 of Applicant's Request for Reconsideration filed November 20, 2007 regarding the 35 U.S.C. 102 rejection of claims 32-34, 37-41, 45-50 and 64 (and regarding the 35 U.S.C. 103 rejection of claims 35, 36, 42, 43, and 51-55) have been fully considered but are not persuasive.

Applicant argues that the "additional layer" to which is referred in the rejection of record is not necessarily a barrier layer. Examiner maintains the position set forth in the rejection of record that "any additional layer would serve as a barrier layer because the additional bulk of the layer would further retard the permeation of gas through the multilayer structure as compared with the multilayer structure without the additional layer". The additional layer is an additional layer in the laminate that constitutes the pipe of Kitami et al. This additional layer would therefore serve as a barrier layer because the additional bulk of the layer would further retard the permeation of gas through the multilayer structure as compared with the multilayer structure without the additional layer.

Applicant refers to a "defin[ition]" of "barrier layer" at paragraph 38 of the specification, but the only limitation of "barrier layer" that is required by paragraph 38 of the specification is that the "barrier layer" comprises one or more layers of film of polymeric materials and/or other materials. The "additional layer" to which is referred in the rejection of record meets this limitation. Applicant appears to argue that paragraph 38 of the specification requires that the

barrier layer be “impermeable to CO₂”, but paragraph 38 of the specification does not require this. The “permeability to carbon dioxide” ranges listed in paragraph 38, all of which are “preferabl[e]”, indicate that paragraph 38 does not require that the barrier layer is “impermeable to CO₂”. None of these “permeability to carbon dioxide” ranges are required by paragraph 38 for a layer to be considered a barrier layer.

In regard to Applicant’s statements in footnote 5 on page 11 of the Request for Reconsideration, a “core of a multilayered structure” is taught at col. 7, lines 53-54. The rejection of record refers to an “additional layer in the core of a multilayered structure”. The teaching of Kitami et al. of an embodiment of the core where the core is of a “multilayered structure”, and therefore, is multilayered, includes multilayered cores of three or more layers, so any layer that is “disposed between” the first and second “tubular structure[s]” corresponds to the claimed barrier layer. This follows from the reference in the rejection of record to an “additional layer in the core of a multilayered structure”: for the “additional layer” to correspond to the claimed barrier layer that is “disposed between” the first and second “tubular structure[s]”, the “additional layer” must be “disposed between” the inner and outer “wall[s]” of the multilayer core. This structure is met in any embodiment of the “core of a multilayered structure” having three or more layers, which falls within the scope of the teaching of a “core of a multilayered structure”.

Applicant argues on page 11 of the Request for Reconsideration, including in footnote 6, that claims 42, 43, 54 and 55 “should be independently allowable”, but Applicant has not provided any argument that convincingly rebuts the basis for rejection of these claims that is of record. Applicant’s argument here appears to assume that the position of the Office is that Kitami

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et al. explicitly teaches the limitations of claims 42, 43, 54 and 55, but this is not the position of the Office as is clear from the rejection of claims 42, 43, 54 and 55 of record. See 35 U.S.C. 103 rejection of claims 35, 36, 42, 43, and 51-55 made of record in paragraph 8 of the previous Office Action mailed September 18, 2007 (claims 42, 43, 54 and 55 are rejected under 35 U.S.C. 103, not 35 U.S.C. 102).

In regard to claim 46, Applicant argues that Kitami et al. does not teach that the pertinent layers do not comprise (at least one) of the recited polyolefins because the portion of Kitami et al. cited in the Office Action teaches “nylon or blends of nylon with polyolefins at only 10 to 40 parts by weight”. However, since Kitami et al. teaches that the pertinent layers comprise (at least one) of the recited polyolefins exactly because Kitami et al. teaches “nylon or blends of nylon with polyolefins at only 10 to 40 parts by weight”. The claim does not require that the polyolefin be present in some amount greater than 40 parts by weight, despite Applicant’s suggestion that this is the case. Examiner further notes that polyethylene, polypropylene and ethylene-propylene copolymers are all disclosed as suitable polyolefins in the passage cited in the rejection of record (more specifically, at col. 6, lines 26-29), and a further (and separate) teaching of polyolefins as a suitable component of the pertinent layers is also disclosed in the passage cited in the rejection of record at col. 6, lines 44-52.

Applicant states on page 12 of the Request for Reconsideration that the obviousness rejection of record (of claims 35, 36, 42, 43 and 51-55) states that Kitami et al. “discloses the claimed ‘barrier layer’ by teaching that ‘the stress crack barrier material has improved impermeation to Freon gases’”, but the rejection of record does not state that Kitami et al. “discloses the claimed ‘barrier layer’ by teaching that ‘the stress crack barrier material has

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improved impermeation to Freon gases’”. See paragraph 8 of the previous Office Action mailed September 18, 2007. The statement “Kitami et al., however, disclose that the stress crack barrier material has improved impermeation to Freon gases (col. 6, lines 15-26)” is a factual statement that is made in the rejection of record in support of the 35 U.S.C. 103 rejection of claims 35, 36, 42, 43, and 51-55. Paragraph 8 of the previous Office Action mailed September 18, 2007. The statement refers to a “barrier material”, not a barrier layer. Reference to a “barrier material” in the rejection of record is consistent with the interpretation of “barrier” of record (“any additional layer would serve as a barrier layer because the additional bulk of the layer would further retard the permeation of gas through the multilayer structure as compared with the multilayer structure without the additional layer”) and the discussion of Kitami et al. of the material of the “inner wall” (col. 6, lines 15-22) which has “improve[d] impermeation to Freon gases” and “resistance to stress cracks”. Contrary to Applicant’s suggestion, the rejection of record does not state that the passage at col. 6, lines 15-22 refers to the layer that the Office relies upon as the claimed “barrier layer”.

Applicant argues that the “‘inner wall’ of Kitami does not correspond to Applicant’s ‘barrier layer’ [as claimed]”, but the rejection of record does not state that the “inner wall” of Kitami does correspond to Applicant’s claimed “barrier layer” (which is “disposed between” the first and second “tubular structure[s]”). See discussion made of record above.

9. Applicant’s arguments presented on page 12 of Applicant’s Request for Reconsideration filed November 20, 2007 regarding the 35 U.S.C. 103 rejection of claim 44 has been fully considered but are not persuasive. Applicant’s arguments depend upon Applicant’s arguments

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regarding the 35 U.S.C. 102 rejection of claims 32-34, 37-41, 45-50 and 64 (and regarding the 35 U.S.C. 103 rejection of claims 35, 36, 42, 43, and 51-55), which have been addressed above.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Walter B Aughenbaugh /
Patent Examiner, Art Unit 1794

02/14/08